



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,790	10/31/2003	Adam Jacob	6604-A-01	1747

7590

10/25/2005

William J. Foley
Cahill, von Hellens & Glazer P.L.C.
Ste. 155
2141 E. Highland Avenue
Phoenix, AZ 85016

EXAMINER

PETRAVICK, MEREDITH C

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 10/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/698,790	Applicant(s) JACOB, ADAM	
	Examiner Meredith C. Petravick	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

lw

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heyne 6,226,902 in view of JP 11235786A.

Heyne discloses a backhoe including:

- an open operator station (110) with a substantially unrestricted sight field
(Col. 3, lines 61-65; Figs. 1-2)
- a boom (124) mounted for side to side swinging movement
- an operator-actuated control (166 or 164) for swinging the boom in near the sight field
- a guard (wall behind controls 114a in Figure 2 and shown in Fig. 1) blocking accidental access to the control from outside the operator's station

However, Heyne fails to disclose the guard being transparent.

Like Heyne, JP 11235786A discloses an operator's station for a construction machine. The operator's station has a guard attached to the front. Unlike Heyne, JP 11235786A makes the guard from shatter-resistant plastic material so that the visibility of the operator is not impaired (See advantage portion of abstract).

Art Unit: 3671

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the guard of Heyne from shatter-resistant transparent plastic as in JP 11235786A, in order not to impair the visibility of the operator as expressly taught in JP 11235786A.

Regarding the limitation to the guard have a height greater than the height of the lower edge of the sight field from the operator's station, in the combination a transparent guard would necessarily lower the lower edge of the sight field from the operator's station as opposed to the non-transparent guard in Heyne since the operator can see through the guard. Therefore, the limitation is met since the lower edge of the sight field from the operator's station in the combination is necessarily in the transparent guard.

Regarding claim 2, the operator's station in Heyne has a floor (Fig. 2) and the control is foot-actuated.

Regarding claim 3, the guard in Heyne extends from side-to-side (Fig. 1).

Regarding claim 7, the guard in JP 11235786(A) is a unitary sheet of shatter-resistant plastic material (See abstract).

Response to Arguments

3. Applicant's arguments filed 8/8/2005 have been fully considered but they are not persuasive.

Applicant argues that the limitation that the "guard have a height greater than the height of the lower edge of the sight field from the operator station" is not met by the combination because the lower edge of the sight field in the Heyne reference is at the top edge of the guard

Art Unit: 3671

since the guard is not transparent. Applicant seems to argue that the lower edge of the sight field in Heyne would be the lower edge of the sight field in the combination.

However, this limitation is not rejected based on Heyne alone but the combination of Heyne and JP 11235786A. In the combination of Heyne and JP 11235786A, the lower edge of the sight field in the combination is not the same as the lower edge of the sight field in Heyne as Applicant argues. Since the guard in the combination is transparent, the operator's sight field is expanded and the lower edge of the sight field is necessarily below the top edge of the transparent guard in the combination. Therefore, the limitation is met by the combination.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 3671

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meredith C. Petravick whose telephone number is 571-272-6995.

The examiner can normally be reached on M-T 8:00 a.m.- 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Meredith C Petravick
Primary Examiner
Art Unit 3671

October 21, 2005